

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13985, of St. Andrews Ukranian Orthodox Church, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.42 to use all floors and basement of the subject premises as a secondary school for sixty-five students and eight teachers and for variances from the prohibition against required parking spaces not being accessible at all times directly from streets or alleys (Sub-section 7206.4), from the prohibition against an access aisle measuring less than fourteen feet in width (Sub-section 7206.5) and from the prohibition against parking spaces being located within three feet of a side lot line (Paragraph 7205.122) to provide nine off-street parking spaces, or in the alternative a variance from the parking requirements to provide no off-street parking (Sub-section 7202.1) in an R-1-B District at premises 4842 - 16th Street, N.W., (Square 2654, Lot 34).

HEARING DATE: July 20, 1983

DECISION DATE: September 7, 1983

FINDINGS OF FACT:

1. The subject site is located at the southwest corner of the intersection of 16th Street and Blagden Avenue, N.W. and is known as premises 4842 16th Street, N.W. It is in an R-1-B District.

2. The area in which the subject property is located contains buildings with a mixture of uses. Within 100 feet of the property on Blagden Avenue, in addition to residences, is the Zion Baptist Church, a day care center and a branch of the Metropolitan Police Boy's Club. In addition, there are numerous churches along Sixteenth Street, in the immediate vicinity of the property. Sixteen Street is a main corridor for traffic in and out of the District of Columbia.

3. The subject property is irregularly shaped, and almost triangular. The site slopes approximately eight feet from 16th Street to Blagden Avenue.

4. The subject property is improved by a large four-story structure with a stucco facade containing approximately 8,700 square feet of usable space. The site also contains a paved area to the south side and rear of the

existing structure which presently provides parking for three vehicles.

5. The subject building was constructed in the 1920's as a single family dwelling. More than thirty years ago, it was sold to the Haitian Government for use as an embassy. Approximately twenty-five years ago it was purchased by St. Andrews Ukrainian Orthodox Church, which has used the premises as a church. The property has not been used as a private single family residence for more than thirty years.

6. The subject building is presently in poor physical condition. The stucco facade is deteriorating rapidly. The roof is in need of repair. The windows are in poor condition. The electrical system needs rewiring. The second interior staircase needs to be fire proofed.

7. The applicant proposes to sell the building to Somerset School, a private non-denominational secondary school, which would make the necessary repairs and renovations and use the building for its school. The sales price to Somerset School is \$250,000, which is less than the value established by two appraisals of the property made by independent appraisers. The contract to purchase is subject to approval by the Board of Zoning Adjustment of the relief sought.

8. A private school is permitted if approved by the BZA. Paragraph 3101.42 of the Zoning Regulations provides that such a school is permitted if the Board determines that:

"3101.421 It is so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions;

3101.422 Ample parking space, but not less than that required in Article 72 of these regulations, is provided to accommodate the students, teachers, and visitors likely to come to the site by automobile."

9. Sub-section 7202.1 of the Zoning Regulations requires a junior high school to provide two parking spaces for each three teachers and other employees. A high school is required to provide two spaces for each three teachers plus one for each twenty classroom seats or one for each ten auditorium seats, whichever is greater. Based upon the number of students and faculty at Somerset School, nine parking spaces are required to be provided.

10. The applicant seeks variances from the prohibition against required parking spaces not being accessible at all times directly from streets or alleys (Sub-section 7206.4),

from the prohibition against an access aisle measuring less than fourteen feet in width (Sub-section 7206.5) and from the prohibition against parking spaces being located within three feet of a side lot line (Paragraph 7205.122), or in the alternative a variance from the parking requirements to provide no off-street parking (Sub-section 7202.1).

11. The School presently has a total of sixty-five students and eight faculty members. Somerset School desires to remain approximately the same size as it has been for the past several years and does not project a future increase in the number of students or faculty.

12. School hours are from 9:00 A.M. until 3:30 P.M., Mondays through Fridays during the school year, except for normal school holidays. During the months of July and August, the school will have approximately thirty summer school students and four faculty members who will attend school from 9:00 A.M. until 1:00 P.M., Monday through Fridays. During both the normal school year and during summer school, students will arrive at school shortly before 9:00 A.M.

13. The subject building has fifteen rooms, three kitchens and numerous bathrooms. An assembly room holds approximately eighty persons. Somerset School's needs for seven classrooms, a recreation room, assembly room and two offices could be accommodated within the existing configuration.

14. The applicant's real estate witness testified that the subject building was listed for sale as a private residence for approximately six months prior to its purchase by Somerset School. During that time, no serious individual residential users showed interest in purchasing the property. During that period, no serious interest in the property was shown by embassies, most embassies now locating in other sections of the city. In addition, except for some church groups, no other organization was interested in a use for the property permitted as a matter-of-right in an R-1-B District. Although churches looked at the property, no churches made offers on the property. The building is too expensive to purchase and maintain for most small church groups. The building is too small for large churches. The cost of heating is \$8,000 per year. It would take approximately \$150,000 to convert the building to residential use.

15. The use of the property as the Somerset School is not likely to become objectionable to adjoining and nearby property because of noise. The School was previously located for a period of approximately ten years in the educational wing of the Chevy Chase Presbyterian Church at Chevy Chase Circle in the District of Columbia. During that period of time, neither the Church nor the neighbors were

disturbed by noise from the School. No complaints were received by the School. Somerset classes on the subject property will be conducted indoors except for physical education which will be conducted in the fields at 16th and Kennedy Streets, two blocks away. All windows of the structure will be double insulated. The use of the property as Somerset School is not likely to become objectionable to adjoining and nearby property because of traffic. No evidence has been presented that traffic in the area would be affected in any way. Sixteenth Street is served by five Metrobus routes with a bus stop in the same block as the property. Approximately five students will walk to school. Some will take public transportation. There will be no substantial difference in the numbers of students and faculty travelling to the school in motor vehicles from those travelling to the existing location of the school at Chevy Chase Circle. In addition, the existence of a circular driveway on the 16th Street side of the property permits the discharge and pick-up of students without interfering with the flow of traffic on 16th Street.

17. The use of the property as the Somerset School is not likely to become objectionable to adjoining and nearby property because of the number of students attending the school. The large building of 8,700 square feet will adequately hold sixty-five students and eight faculty members in its fifteen rooms. Additionally, as heretofore stated, all classes will be conducted inside the building except physical education, which will be conducted at the fields at 16th Street and Kennedy Streets, N.W. There is no evidence that the students will in any way disrupt the neighborhood.

18. The use of the property as the Somerset School is not likely to become objectionable to adjoining and nearby property because of trash or any other objectionable conditions. There will be no food service at the School. The only trash will come from lunch bags and normal school trash, which will be deposited in three supercans located in the existing arcade under the first floor kitchen and service area. There is insufficient waste paper generated by the school to justify a dumpster. The super cans will be handled by a commercial hauler. This area will be screened. The only problem Somerset School had with trash during its ten years at Chevy Chase Presbyterian Church was one complaint, which was quickly corrected when the School was made aware of the problem.

19. The irregular shape and slope of the site, plus the large size of the building on the lot restricts the number of parking spaces available on the site to three without a variance. It is not possible to provide parking in the building. The applicant therefore seeks a variance from Sub-section 7202.1 to dispense with the requirement for

additional parking on the site. As an alternative, the applicant seeks a variance allowing an increase in the size of the existing parking area to accommodate five vehicles with a waiver of the other four required parking spaces. A third alternative would be to increase the size of the parking area to permit nine vehicles to stack park. Such parking would require a variance from the ingress and egress requirements of Sub-section 7206.4 and the fourteen foot wide aisle requirements of Sub-section 7206.5 as well as the three foot side lot line restrictions of Sub-section 7205.122.

20. Within two blocks of the subject property is the Carter Baron parking lot, which provides parking for 1,000 cars. Many of these spaces lie within 800 feet of the subject property. According to the Acting Superintendent of Rock Creek Park, who administers Carter Baron, as set forth in Exhibit No. 33 of the record, the lot is underutilized and has ample space to accommodate all of the Somerset School's parking needs. The applicant could not seek a special exception under Sub-section 7205.3 to locate the required accessory parking off the site because the National Park Service could not provide the School with a perpetual agreement to make its spaces available. No more than six faculty members and six students will drive their cars to school and require parking.

21. The Somerset School will require all students and faculty who drive to school to park at Carter Baron. Stickers will be issued to those who drive, identifying their association with the School. Those persons who violate the rule will be disciplined.

22. Somerset School will permit only two school vans to park on the property itself. One space will be allocated to visitor parking.

23. Somerset School will provide and maintain hedges around the property in such a manner that will provide maximum screening from the parking area as shown in the site plan submitted. The site presently has a number of mature trees and other existing landscaping. The less parking required on the property, the more of the existing green space can be maintained.

24. Advisory Neighborhood Commission 4-C, by letter dated July 12, 1983, recommended that the application be approved. The ANC reported that the application was discussed at four different ANC meetings. Somerset School appeared at each meeting and presented its position and answered questions. Opponents of the application also appeared and reported their views at those meetings. The ANC reported that it was of the opinion that the School would not have an adverse impact on the immediate area. The Board concurs with the ANC recommendation.

25. Persons testified at the public hearing and there were letters of record in favor of the application based on the excellent record the School had in the field of education.

26. The Northwest Boundary Civic Association and the Carter Baron East Citizens Association recommended that the application be approved. They advised that both Associations had held meetings with the applicant in which the plans for the School were thoroughly discussed. Both organizations were of the opinion that the School would be an asset to the neighborhood. The Carter Baron East Citizens Association requested that the operation of the school be limited to the Somerset school and its proposed operation. The Board concurs.

27. Four persons testified in opposition to the application. The Rock Creek East Neighborhood League, Inc. also opposed the application. The League also submitted a petition in opposition to the application based on the grounds that the signers of the petition were opposed to all uses of the subject site other than a single family detached residence. The opposition argued that the immediate neighborhood was saturated with churches, schools and other organizations. Such numbers were an intrusion into a neighborhood of residences and were changing the character of the neighborhood. The opposition further argued that the School could not rely upon parking being available at Carter Baron eternally. That site could be developed and the School would then turn to the neighboring streets for relief. Lastly, the opposition argued that they feared that the School would become a community center with many organizations using its facilities and thus creating a further intrusion into a residential community.

28. One of the four persons testifying in opposition to the application was the owner of premises 4861 Blagden Avenue, N.W. The front entrance of said premises is next door to the rear entrance of the subject school property. The side entrance is exactly opposite the side entrance leading to the basement of the subject school property. This opponent argued that the quality of her life and the value of her property would be adversely affected if the proposed relief is granted based upon the following:

- a. The least attractive and most unsightly features of any building are located in the rear or at the side, not in the front. This means that the necessary trash dumpsters, fire escapes, parking facilities etc., will be located in close proximity either to her front or her patio entrance or both. The distance from the property line to the middle of her front walk is less than eight feet. The distance from the property line

to the middle of her side patio is less than twenty-five feet. In addition, trucks making deliveries and vans transporting students would use the side driveway which now exists at the side of the property nearest hers, since there is now no rear vehicular access from 4842 - 16th Street onto Blagden Avenue. Whereas these unsightly conditions currently exist to some small degree, they can be expected to drastically increase for the proposed school of sixty-five teen-age students plus eight faculty members.

- b. The attendant noise and traffic for at least five days each week and nine months out of each year make life next door to a school, any school, far from tranquil. In the 4800 block of Blagden Ave., zoned for single family residences, where the residents are of retirement age and where the immediate next door neighbor is a retired woman who has spent her entire working life in schools and teaching, the thought of retiring to a life of listening to the incessant noise of sixty-five or more, modern day, teenagers engaged in free and unfettered individual learning is deeply disturbing.
- c. The residential ambience of the neighborhood would be further eroded, when the school is added to the existing church, nursery school, boys club and day care center. The block is already saturated by non-residential influences, and one more would negatively affect the quality of life.

29. The Board in addressing the concerns of the opposition finds as follows:

- a. The applicant is seeking its relief through a special exception and not a use variance. There is no burden on the applicant to prove that the subject site cannot be used for residential purposes.
- b. Any "intrusion of organizations into the neighborhood" would be subject to the Zoning Regulations. If not permitted as a matter-of-right, each organization would then be subject to approval by the BZA which would determine each application on its own merits. The Regulations do not provide for a cumulative impact test.
- c. If an organization exceeded the use permitted by the BZA or the Zoning Regulations, then such organization would be subject to the enforcement policies of the office of the Zoning Administrator.

- d. The relief, as hereinafter conditioned, would provide the community and the BZA the opportunity to reevaluate any parking issue after a period of five years.
- e. The relief as hereinafter conditioned precludes non-school related activities on the subject premises.
- f. Approval of the application, with conditions related to landscaping, parking spaces and a limitation on enlargement of the paved area, will not create the deleterious effects anticipated by the opposition.
- g. Based on the history of the subject school and the evidence of many witnesses, the Board does not anticipate that the immediate environment will be adversely affected by noise, traffic, debris and pollution.
- h. The issue of the value of property being adversely affected by the presence of a school is subjective and speculative. No probative evidence was introduced in support of this concern.

CONCLUSIONS OF LAW AND OPINION:

Based upon the record the Board concludes that the applicant is seeking special exception and variance relief. To grant the special exception relief, the Board must find that the applicant has complied with the provisions of Paragraph 3101.42 of the Zoning Regulations. Based on the findings of fact the Board concludes that the applicant has met its burden of proof. The school is so located and with the conditions imposed by the Board, is not likely to become objectionable to adjoining or nearby property because of noise, traffic, number of students, or otherwise objectionable conditions. Ample parking space is provided to accommodate the students, teachers and visitors likely to come to the site by automobile. The Board further concludes that the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

As to the variance relief, the Board concludes that this constitutes an area variance, the granting of which requires proof of a practical difficulty upon the owner of the property arising out of some unique or exceptional condition of the property. The irregular shape of the lot, the slope of the site, and the location of the building in relation to the existing mature trees and other landscaping on the lot restricts the number of spaces available on the

site to three without variance relief for additional spaces. The Board concludes that this constitutes the practical difficulty. The applicant has suggested alternative plans for providing parking on site. It is the Board's opinion that the alternatives would destroy the beauty of the site. Green areas would have to be paved over. The cluster of cars would detract from the orderliness of the grounds and landscaping. This is not necessary, based on Finding Nos. 20 through 24. The Board will condition the grant to providing only three spaces on site, and hereby approves such variances from the number of spaces and the access, aisle width and location requirements as are necessary to provide such spaces in accordance with this order.

The Board is concerned about the potential impact of the School on the community as far as parking is concerned. While the Board has found an exceptional condition of the property and a practical difficulty inherent in the land, the Board believes that it must limit its approval of the parking variances to a period of five years, in order to assess the actual impact of the School as operated.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

- a. Operation of the school shall be limited to The Somerset School.
- b. The number of students shall not exceed sixty-five and the number of faculty and staff shall not exceed eight.
- c. There shall be no non-school-related activities on the subject premises.
- d. Landscaping shall be in accordance with the site plan marked as Exhibit No.44 A of the record, as detailed by the letter marked as Exhibit No. 44 of the record.
- e. Approval of the variances cited above shall be for a period of FIVE YEARS from the date of this order. The applicant shall reapply to the Board prior to the expiration of the approval granted herein for evaluation of the parking situation and for permission to continue to provide parking as set forth in this order.
- f. Three parking spaces shall be provided on the site.
- g. There shall be no enlargement of the existing paved area on the site.

VOTE on the special exception: 3-1 (Lindsley Williams, Carrie L. Thornhill and Charles R. Norris to grant, William F. McIntosh opposed, Douglas J. Patton not voting, not having heard the case).

VOTE on the variance: 3-0 (Carrie L. Thornhill, Lindsley Williams and Charles R. Norris to grant, William F. McIntosh abstaining, Douglas J. Patton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

NOV 14 1983

FINAL DATE OF ORDER: _____

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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